

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11 SEVAG YARALIAN,) Case No. CV 15-06930 DDP (GJSx)
12 Plaintiff,)
13 v.) **ORDER DENYING PLAINTIFF'S MOTION
TO REMAND**
14 HOME DEPOT U.S.A., INC.,) [Dkt. No. 15]
15 Defendants.)

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17 Presently before the Court is Plaintiff Sevag Yaralian's
18 Motion to Remand. (Dkt. No. 15.) After reviewing the parties'
19 submissions, the Court adopts the following Order.

20 I. BACKGROUND

21 Plaintiff brings the present action against Defendant Home
22 Depot U.S.A., Inc. for damages resulting from an injury Plaintiff
23 sustained while shopping at a store owned and operated by
24 Defendant. (See Compl. ¶ 11.) Plaintiff contends that due to
25 Defendant's negligence, a heavy piece of lumber fell on his
26 forehead, causing a serious injury. (Id.) In his complaint,
27 Plaintiff seeks an unspecified amount of damages as a result of his
28 injury. (Id. at 4:19-28.) Defendant timely removed the case to

1 this Court on the basis of diversity jurisdiction. (See Def. Not.
2 of Removal.) Plaintiff now moves this Court for an order remanding
3 the action to state court pursuant to 28 U.S.C. § 1447(c). (See
4 Pl. Mot. Remand.)

5 **II. LEGAL STANDARD**

6 A defendant may remove a case from state court to federal
7 court if the case could have originally been filed in federal
8 court. 28 U.S.C. § 1441(a). There is a "strong presumption"
9 against removal and the Defendant has the burden of establishing
10 that removal is proper by a preponderance of evidence. Gaus v.
11 Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992); Morrison v. Zanqpo,
12 No. C-08-1945 EMC, 2008 WL 2948696, at *1 (N.D. Cal. July 28,
13 2008). A defendant has thirty days in which to remove the case
14 after receiving, "through service or otherwise, . . . a copy of the
15 initial pleading setting forth the claim for relief upon which such
16 action or proceeding is based." 28 U.S.C. § 1446(b)(1). Likewise,
17 a "motion to remand the case on the basis of any defect other than
18 lack of subject matter jurisdiction must be made within 30 days
19 after the filing of the notice of removal under section 1446(a)." 20
28 U.S.C. § 1447(c).

21 **III. ANALYSIS**

22 Plaintiff argues that his "[m]otion for remand should be
23 granted because there is a strong presumption against removal
24 jurisdiction, the court must strictly construe the removal statute,
25 and Defendant fails to carry its burden of establishing federal
jurisdiction is proper in this case." (Pl. Mot. Remand at 3:5-8.)
26 Specifically, Plaintiff alleges that "Defendant failed to establish
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1 by a preponderance of the evidence that the amount in controversy
2 exceeds the jurisdictional threshold." (Id. at 3:22-24.)

3 Defendant argues in response "that it has met its burden of
4 establishing the amount of controversy in this matter exceeds the
5 threshold statutory amount of \$75,000." (Def. Opp'n at 2:8-9.)
6 Defendant points to Plaintiff's pre-litigation settlement demand of
7 \$196,000 and Plaintiff's refusal to stipulate that the amount in
8 controversy does not exceed \$75,000. (Decl. Caitlin R. Johnson ¶¶
9 3, 7.) Defendant notes that not only did Plaintiff make a pre-
10 litigation settlement demand for \$196,000, but also Plaintiff
11 refused to reduce the demand after commencing litigation. (Id. ¶¶
12 3, 4.) Further, Defendant offered to "stipulate to remand the
13 action . . . if [Plaintiff] stipulated that the amount in
14 controversy does not exceed \$75,000," but Plaintiff refused. (Id.
15 ¶ 7.)

16 Plaintiff responds that his "refusal to stipulate is not
17 dispositive or even a persuasive factor in establishing the Court's
18 subject matter jurisdiction." (Pl. Reply at 5:16-18.) Further,
19 Plaintiff argues that the settlement letter is not relevant because
20 "Defendant has utterly failed to provide a shred of evidence or
21 analysis to support a finding that any alleged settlement offer was
22 a reasonable estimate of Plaintiff's claim." (Id. at 6:18-19.)
23 Plaintiff contends that the dismissal of Plaintiff's prayer for
24 punitive damages renders "unreliable" Plaintiff's pre-litigation
25 settlement demand. (Id. at 6:25-27.) Lastly, Plaintiff also makes
26 an evidentiary objection to Defendant's reference to the settlement
27 amount without including the actual settlement letter under the
28 Best Evidence Rule. (Dkt. No. 19.)

1 "Where the complaint does not demand a dollar amount, the
2 removing defendant bears the burden of proving by a preponderance
3 of evidence that the amount in controversy exceeds [the
4 jurisdictional threshold]." Singer v. State Farm Mut. Auto Ins.
5 Co., 116 F.3d 373, 376 (9th Cir. 1997) (citing Sanchez v.
6 Monumental Life Ins. Co., 102 F.3d 398, 404 (9th Cir. 1996)).
7 "When a '[d]efendant's calculations [are] relatively conservative,
8 made in good faith, and based on evidence wherever possible,' the
9 court may find that the '[d]efendant has established by a
10 preponderance of the evidence that the amount in controversy' is
11 met." Geerlof v. C & S Wholesale Grocers, Inc., No. 2:13-cv-02175-
12 MCE, 2014 WL 1415971, at *7 (E.D. Cal. Apr. 14, 2014) (quoting
13 Behrazfar v. Unisys Corp., 687 F. Supp. 2d 999, 1004 (C.D. Cal.
14 2009)). The court may additionally "consider[] facts presented in
15 the removal petition as well as any 'summary-judgment-type evidence
16 relevant to the amount in controversy at the time of removal.'
17 Conclusory allegations as to the amount in controversy are
18 insufficient." Matheson v. Progressive Specialty Ins. Co., 319
19 F.3d 1089, 1090-91 (9th Cir. 2003) (quoting Singer, 116 F.3d at
20 377)(footnotes omitted).

21 Evidence in an opposition to a motion for remand is treated as
22 an amendment to the notice of removal and can be considered for
23 purposes of establishing the amount in controversy. Cohn v.
24 Petsmart, Inc., 281 F.3d 837, 840 n. 1 (9th Cir. 2002). This
25 evidence may include settlement letters, affidavits, declarations,
26 and a party's refusal to stipulate that damages are below the
27 statutory threshold. See Babasa v. LensCrafters, Inc., 498 F.3d
28 972, 975 (9th Cir. 2007) (quoting Cohn, 281 F.3d at 840) ("We

1 previously have held that '[a] settlement letter is relevant
2 evidence of the amount in controversy if it appears to reflect a
3 reasonable estimate of the plaintiff's claim.'"); Geerlof, No.
4 2:13-cv-02175-MCE, 2014 WL 1415974, at *4 (E.D. Cal. Apr. 14,
5 2014) (quoting Lewis v. Verizon Commc'nns, Inc., 627 F.3d 395, 400
6 (9th Cir. 2010)) ("When a defendant must show that the amount in
7 controversy exceeds the statutory amount, the defendant 'may rely
8 upon affidavits and declarations to make that showing;');
9 Morella v. Safeco Ins. Co. of Ill., No. 2:12-cv-00672-RSL, 2012 WL
10 2903084, at *1 (W.D. Wash. July 16, 2012) (finding that a refusal
11 to stipulate was relevant although not conclusive in determining
12 amount in controversy).

13 Here, Defendant has satisfied its burden of proving the amount
14 in controversy exceeds the statutory amount. In its Notice of
15 Removal, Defendant concluded that, based on the allegations in the
16 complaint, the amount in controversy exceeds \$75,000 in this case.
17 (Def. Not. of Removal ¶ 10.) However, Defendant failed to provide
18 any evidence beyond its assertion, and such conclusory allegations
19 are insufficient to meet the preponderance of evidence standard.
20 But Defendant's assertion is now supported by evidence presented in
21 Defendant's Opposition to Plaintiff's Motion for Remand.

22 Specifically, Defendant presents evidence of Plaintiff's pre-
23 litigation settlement demand of \$196,000, Plaintiff's refusal to
24 reduce the demand, and Plaintiff's refusal to stipulate that the
25 amount in controversy does not exceed \$75,000. (Decl. Caitlin R.
26 Johnson ¶¶ 3, 4, 7; Def. Response to Pl. Evidentiary Objection, Ex.
27 A (attaching the actual settlement letter from Plaintiffs in
28 response to Plaintiff's evidentiary objection).) As the Ninth

1 Circuit has made clear, "the amount in controversy inquiry in the
2 removal context is not confined to the face of the complaint."
3 Valdez v. Allstate Ins. Co., 372 F.3d 1115, 1117 (9th Cir. 2004).
4 Instead, "the defendant 'may rely upon affidavits and
5 declarations'" to show that the amount in controversy exceeds the
6 statutory amount. Geerlof, No. 2:13-cv-02175-MCE, 2014 WL 1415971,
7 at *4 (quoting Lewis, 627 F.3d at 400). Here, the settlement
8 demand outlines in a reasonable manner the basis for Plaintiff's
9 settlement amount, which is above \$75,000 even without the punitive
10 damages included. Because Defendant's calculations are reasonably
11 supported by the evidence it now submits, the Court finds Defendant
12 has established that the amount in controversy exceeds \$75,000.

13 **IV. CONCLUSION**

14 For the reasons discussed above, the Court DENIES Plaintiff's
15 Motion to Remand. (Dkt. No. 15.) Plaintiff's Evidentiary
16 Objection is OVERRULED. (Dkt. No. 19.)

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18 IT IS SO ORDERED.

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20 Dated: December 9, 2015


21 DEAN D. PREGERSON
22 United States District Judge

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